

CHAPTER NO. 38

HOUSE BILL NO. 2095

By Representative Gresham

Substituted for: Senate Bill No. 1997

By Mr. Speaker Wilder

AN ACT to amend Chapter 69 of the Private Acts of 2001; and any other acts amendatory thereto, relative to the Fayette County Adequate Facilities Tax.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

(a) Chapter 69 of the Private Acts of 2001; being the Fayette County Adequate Facilities Tax, and any other act amendatory thereto, is amended by deleting the chapter in its entirety and by substituting instead Sections 1(b) through 13 of this act:

(b) This act shall be known and may be cited as the Fayette County Adequate Facilities Tax.

SECTION 2. As used in this act, unless a different meaning appears from the context:

(a) "Board of adjustments and appeals" means the board established in Fayette County to hear grievances regarding purported irregularities in fees or taxes assessed under this act.

(b) "Building" means any structure constructed for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home. "Building" does not include any structure used for agricultural purposes.

(c) "Building permit" means a permit for development issued in Fayette County, whether by the county or by any city therein.

(d) "Capital improvement program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expense, for the purchase, construction, or replacement of the physical assets of the community are included.

(e) "Certificate of occupancy" means a license for occupancy of a building or structure issued in Fayette County, whether by the county or by any city therein.

(f) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which provides, adds to, or increases the floor area of a residential or non-residential use.

(g) "Dwelling unit" means a room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly, or longer basis; physically separated from any other room(s) or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(h)

(1) "Floor area" for non-residential development means the total of the gross horizontal area of all floors, including usable basements and cellars, below the roof and within the outer surface of the main walls of principal or accessory buildings or the center lines of party walls separating such buildings or portions thereof, or within lines drawn parallel to and two (2) feet within the roof line of any building or portions thereof without walls, but excluding arcades, porticoes, and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, service, or production areas.

(2) "Floor area" for residential development means the total of the gross horizontal area of all floors (including basements, cellars, or attics), which is heated or air-conditioned living space, or designed to be finished into heated or air-conditioned living space at a future date.

(i) "Governing body" means the Board of County Commissioners of Fayette County, Tennessee.

(j) "Non-residential" means the development of any property for any use other than residential use, except as may be exempted by this act.

(k) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and includes the plural as well as the singular number.

(l) "Place of worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are or are intended to be leased, rented or used by persons who do not have tax-exempt status or which are intended or used for the residence of any individual.

(m) "Public building" means a building owned by the State of Tennessee or any agency thereof; a political subdivision of the State of Tennessee, including but not necessarily limited to counties, cities, school districts and special districts; or the federal government or any agency thereof.

(n) "Public facility" means a physical improvement undertaken by the county or city, including, but not limited to the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities and other governmental capital improvements benefiting the citizens of the county or city.

(o) "Residential" means property developed for a dwelling unit or units.

SECTION 3. It is the intent and purpose of this act to authorize Fayette County to impose a tax on new development in the county payable at the time of issuance of a building permit so as to ensure and require that the persons responsible for new development share in the burdens of growth by paying their fair share for the cost of new and expanded public facilities made necessary by such development.

SECTION 4. Engaging in the act of development within Fayette County, except as provided in Section 6 herein, is declared to be a privilege upon which Fayette County may, by resolution of the governing body, levy a tax in an amount not to exceed the rate set forth in Section 7.

SECTION 5. The governing body shall impose the tax authorized herein by resolution after adopting a capital improvements program indicating the need for the cost of public facilities anticipated to be funded, in part, by this tax and after finding that the need for such public facilities is reasonably related to new development in the county. The resolution of the governing body imposing this tax shall state the rate of tax on new residential and non-residential development. The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this act.

SECTION 6. This act shall not apply to development of:

- (a) Public buildings.
- (b) Places of worship.
- (c) Barns or outbuildings used for agricultural purposes.
- (d) Replacement of buildings taken by eminent domain by any public body; replacement structures for previously existing buildings destroyed by fire, or other disaster; or replacement on the same site of any building which either has had a privilege tax paid upon it, or has been utilized as a residence for three (3) years immediately preceding the date of application for a building permit.
- (e) Mobile homes with actual cash value of less than ten thousand dollars (\$10,000). The cash value of mobile homes shall be determined by using the Formost Insurance Company appraisal figures for mobile homes.
- (f) Accessory buildings on a residential lot.
- (g) Additions to an existing single-family dwelling which was originally completed at least one (1) year prior to such addition.
- (h) A structure owned by a non-profit corporation which is a qualified 501(c)(3) corporation under the Internal Revenue Code.
- (i) Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, provided that the permanent structure is a residence for the owner and occupant of the mobile home and that owner and occupant has resided on the property for a period of not less than three (3) years.
- (j) Buildings which either have previously had a privilege tax paid upon them, or which have been continuously occupied for three (3) years immediately

preceding the date of application for a building permit, and which are moved from one site within the county to another site within the county, provided that no new building replaces the building being removed. If a building, which has been continuously occupied for three (3) consecutive immediately prior to the date of application for a building permit, is moved to another site within the county and a new building is placed on the originating site, then the moved building will pay the privilege tax at its new site.

SECTION 7. For the exercise of the privilege described herein, Fayette County may impose a tax on new development not to exceed one dollar (\$1.00) per gross square foot of new residential development and new non-residential development. The county may develop a tax rate schedule by which residential and non-residential uses are classified by type for the purpose of imposition of the tax authorized herein. The establishment of the rate for the purpose of the tax per square foot shall require a two-thirds (2/3) vote of the governing body.

SECTION 8. The tax established in this act shall be collected at the time of application for a building permit for development as herein defined by the county official duly authorized by the county executive. If the building permit is issued by the county, then the county building commissioner or other responsible official shall receive payment in full in cash or other negotiable instrument as specified by resolution of the county and as approved by the county attorney. If the building permit is issued by a city, then the city shall, before issuance of the building permit, require evidence by a valid certificate executed by the county building commissioner that the full amount of the tax due the county has been paid. No building permit for residential or non-residential development as herein defined shall be issued in any incorporated or any unincorporated area of Fayette County unless the tax has been paid in full to the county or a negotiable instrument, approved by the county attorney and payable to the county, has been received. The issuance of a building permit by any city official without a certificate from the county that the tax has been paid shall render the city liable to the county for the sum or sums that would have been collected by the county had the certificate of tax paid been required by the city.

The tax due herein is declared to be a lien against the real property upon which the development has occurred until paid and shall be superior to all other liens on such property except for property tax liens. Said tax shall be added to the property tax and must be paid at the same time as the real property tax is paid. Interest of one percent (1%) per month, and a penalty of one-half percent (1/2 %) per month or fraction thereof shall be added to the tax due if not paid when first due, unless the taxpayer successfully contests the applicability of such tax by appeal as provided in this act. Notice of such lien may be, but is not required to be, recorded in the office of the register of deeds. Such lien may be enforced by action instituted in the chancery court of Fayette County for sale of the real property to enforce this lien.

SECTION 9. All tax funds collected by the county shall be used for the purpose of providing public facilities, the need for which is reasonably related to new development.

SECTION 10. The authority to impose this privilege tax on new development in Fayette County is in addition to all other authority to impose taxes, fees, assessments, or other revenue raising or land development regulatory measures granted either by the private or public acts of the State of Tennessee, and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

SECTION 11.

(a) Any person aggrieved by the decision of the county building commissioner or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to Fayette County and by notifying the official that the payment is made under protest; and

(2) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment.

(b) Appeals shall be heard by the Fayette County board of adjustment and appeals for development fee or adequate facilities tax. A hearing shall be scheduled within forty-five (45) days of the written request for appeal. The board of adjustment and appeals shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued from time to time by a majority vote of the board for further information. The board of adjustment and appeals shall act as a quasi-judicial body whose purpose is to determine the intent of the act, its applicability to the appellant, and to rule upon the interpretation of the official. The board shall not be bound by formal rules of evidence applicable to the various state courts.

Hearings before the board shall proceed as follows:

(1) The building commissioner shall explain his or her ruling and the reasons for the ruling.

(2) The appellant shall explain his or her reasons for protesting the ruling.

(3) The board may request further information from any county official, including, but not limited to the county executive, county commissioners or committee members, the county attorney, or the county development staff. The board does not have the power to subpoena.

(4) The board shall deliberate and render a decision by a majority vote. Decisions shall be reduced to writing and copies shall be sent to all parties and shall become a part of the minutes of the board. Decisions of the board of adjustment and appeals shall be final, except that either the building official or the person aggrieved may seek review of the board's actions by certiorari and supersedeas to the chancery court of Fayette County, provided that an application to the court is made within sixty (60) days of the written decision of the board.

SECTION 12. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to Fayette County. This act shall be deemed to create an additional and alternative method for Fayette County to impose and collect taxes for the purpose of providing public facilities made necessary by new development in the county.

SECTION 13. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Fayette County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by him to the Secretary of State.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes it shall become effective upon being approved as provided in Section 14.

PASSED: May 12, 2003



JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 27th day of May 2003



PHIL BREDESEN, GOVERNOR